

## REMARKS

This Response is made to the Office Action dated June 1, 2004. Claims 1-9 and 13-22 are pending in this application. Claims 10-12 were previously withdrawn in view of a restriction requirement. Applicant respectfully traverses the rejection of the pending claims. Favorable reconsideration is requested.

Applicant notes that the Examiner has objected to the drawings as failing to comply with 37 C.F.R. § 1.84(p)(4) because the Examiner believes that reference characters “18” and “42” have been used to designate the same structure. However, Applicant respectfully disagrees with the Examiner. As stated in the specification in numerous locations, the reference numeral 18 is used to designate the filtering portion of the filtering device 10. This filtering portion, in turn, includes a filtering member 36 along with a directional member 42 attached to the filtering member 36. Accordingly, the reference numeral 42 has been utilized to designate the directional member while the reference numeral 18 has been used to define the composite filtering portion of the device. Accordingly, it is believed that reference numerals 18 and 42 do not designate the same structure.

It is noted that in an Office Action dated May 9, 2002, the Examiner made the same objection to the drawings, claiming that reference characters 42 and 18 had been used to designate the filter portion. In response to the Examiner’s rejection, Applicant revised the drawings to remove the lead line for numeral “18” which led directly to the directional member and inserted an arrow in its place to designate the composite filtering portion. According, Applicant believes that these reference numerals do not point to the same structure and no correction is necessary.

Claims 1-9 and 13-22 were rejected under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent No. 6,152,946 to Broome et al. (the “Broome patent”). In the Office Action, the Examiner has indicated that the Broome patent discloses the use of a directional member 20/36 shown in FIG. 6. Applicant has carefully reviewed the

Broome patent and notes that the element designated by the numeral 36 refers to a “fold” of the self-expanding frame 24. This fold 36 is part of the self-expanding frame 24 which helps to collapse the frame 24 into a delivery position within a lumen of a delivery sheath 64. This fold 36, however, does not act in any manner as a directional member in accordance with the present invention. Rather, quite the opposite, these folds 36 form part of the self-expanding frame 24 utilized to place the filter 22 into its expanded position. In this regard, the frame 24 and folds 36 must be formed of a Nitinol alloy or other elastic material so that the frame “springs” back into an expanded profile after the confining force imparted via the delivery sheath 64 is released. Accordingly, it is not fluid flow in the body vessel which expands the folds 36 and self-expanding frame 24, but rather, the self-expanding properties of the materials used to form the frame.

Applicant’s invention, on the other hand, utilizes fluid flow and pressure in the vessel to act on the directional member, as recited in the claims, to deploy the filtering portion in the vessel. The filter portion acts much like a parachute. Without the presence of a fluid flow, the directional member of the present invention would not self-expand, as does the self-expanding frame and folds of the Broome patent. The Broome patent needs a separate self-expanding frame to open up the filter once released from the delivery catheter. Accordingly, it does not rely on the presence of fluid flow to open the filter. On the other hand, Applicant’s invention will deploy once sufficient fluid flow is achieved in the body vessel. Thus, the directional member of the present claims is not a self-expanding component and is not part of a self-expanding frame. Rather, the present invention eliminates the need for a self-expanding frame. For all these reasons, the device disclosed in the Broome patent fails to disclose the presently claimed invention. Applicant respectfully requests the Examiner to withdraw the Broome patent as an anticipatory reference to the present claims.

The Examiner has rejected claims 1-9 and 13-22 under the judicially created doctrine of double-patenting over claims 1-57 of U.S. Patent No. 6,540,722 to Boyle et al. and claims 1-8 of U.S. Patent No. 6,702,834 to Boylan. Applicant hereby submits

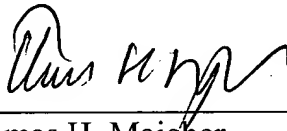
concurrently with this Response a Terminal Disclaimer which overcomes the non-statutory double patenting rejection.

In view of the foregoing, it is respectfully urged that all of the present claims are patentable and in a condition for allowance. The undersigned attorney can be reached at (310) 824-5555 to facilitate prosecution of this application, if necessary.

In light of the above remarks, Applicant respectfully requests that a timely Notice of Allowance be issued in this case.

Respectfully submitted,

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